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THE TAKKANOT OF EZRA

(v. *JQR.*, N.S., VIII, pp. 61-74).

It is well known that some of the great expounders of the Talmud many times took the liberty to interpret Mishnayot or Baraitas at variance with the traditional exegesis of the Amoraim (see especially in Rapoport's *Erech Millin*, p. 238). However, they availed themselves of this right only in haggadic sentences or historical investigations. Modern critics saw no reason why they should not apply the same method in halakic Mishnayot and Baraitas as well. There is no need to enumerate instances, the expert knows them, others are not interested in them. There would therefore be no reason to object to Dr. Zeitlin's new explanations of the ancient Baraita dealing with the Takkanot Ezra from this standpoint, although he is at variance with the authorized explanations. Yet, before we take carefully such a step to override the talmudic expositions, which are not generally built in the air and based on misunderstanding, we have to consider whether there is a necessity, or at least a plausible reason to do so. I mean Dr. Zeitlin's all too clever interpretation of the fifth Takkanah. Before entering upon a discussion of this Takkanah, however, I should like to raise another point too. Dr. Zeitlin gives as his sources B. Baba Ḳamma, 82 b, and Pal. Megillah, iv, 1, p. 75 a. He overlooked apparently another Baraita b. Megillah 31, by R. Simon ben Eleazar: עזרא חיקן להן: לְיִשְׂרָאֵל שִׁיְהוּ קוֹרִין קִלְלוֹת שְׁבַת־תּוֹרָה כְּהֻנִּים קוֹרֵם עֲצֵרֶת וּשְׁבַמְשֵׁנָה תּוֹרָה קוֹרֵם רֹאשׁ הַשָּׁנָה. There is furthermore another version of our Baraita which the historian has to consider in order to define the relation of the various versions one to another; I mean the version in the Pirke Rabbenu ha-Ḳadosh, X. 7 (see Schoenblum, *שְׁלֹשָׁה כְּפָרִים נִפְתָּחִים*, Lemberg, c. 1877, p. 40 b), where we read:

עשרה דברים תיקן עזרא : I שיהיו קורין במנחה בשבת ובשני ובחמישי II ושיהיו דנין בשני ובחמישי. III ושתהא אשה משכמת ואופה בע"ש כדי שתהיה פת מצויה לעניים. IV ושיהיו אוכלין שום בלילי שבתות כדי שיזדקק לאשתו בלילי שבת ויקיים מצות עונה. V ושיהיו נשים מספרות בב"ה כדי שלא יבוא אדם וישב ביניהן. VI ושתהא אשה חופפת תחלה ובודקת עצמה וטובלת כדי שתזדקק לבעלה בטהרה שלמה. VII והתקין טבילה לבעלי קריין. VIII ושיהיו ריכלין מחזירין בעירות. IX ושתהא אשה חוגרת בסינר ושתהא אשה יושבת ומכבדת את ביתה ומעשה בריבה אתה שהיתה עומדת ומכבדת את ביתה ובא כלב ורבעה ובא מעשה לפני From these ten Takkanot two are missing in the Baraitas mentioned in the Talmudim. On the other hand, we have to add here the Takkanah בחמשה בשבת and the institution mentioned by Simon ben Eleazar. The order seems to have been : (1) Takkanot for special days, e.g. Sabbath, Monday, and Thursday, and the Eve of Sabbath, and (2) Takkanot for the women.

The interpretation given for the fifth Takkanah does not hold good. First of all we are told that they did not permit the eating of garlic, because before plucking it from the ground they moistened it with water. This Halakah is based on Tosefta Makshirin, III, 3, ed. Zuckermann, p. 675, l. 19 f. Now, how are we to understand that the Tosefta singled out a special kind of garlic (שום בעלכבי), and does not speak of garlic generally (שום בעלמא)? Secondly, wherefore did they not include in the Takkanot of Ezra the provision for מאלכסנדריא, where the same reason and fear exists? Surely אם כן does not mean : *'ye, who do not avail yourselves of the Takkanah,'* but in both cases : *'if that is so that they moistened it with water,'* &c. Thirdly, we may ask for a reason, what has the eating of garlic to do with the Eve of the Sabbath? Now Dr. Zeitlin informs us : The Talmud's explanation makes thereof a strange, grotesque takkanah, and long ago many expressed surprise that a Baraita should ascribe it to Ezra, particularly as the making of Sabbath eve the זמן עונה is one of the most recent things of the Talmud. Really? The source is B. Ketubot 62, yet the scholars mentioned there relate the actual conditions of their time, and do not suggest

with one word that they refer to a newly introduced custom or usage (see on this point M. Bloch, *Shaare Torat ha-Takkanot*, Wien, 1879, I, 1, p. 118). The history of Jewish sects justifies fully the traditional explanation of our Takkanah. The Book of Jubilees, no matter who the author was or to what party he belonged, or when he lived, teaches us clearly that there were Jews who actually prohibited *תשמיש* on the Sabbath eve (see chap. L, 8 and B. Beer's remarks in his *Noch ein Wort zum Jubiläenbuch*, p. 54). Is it not plausible to say that the author or authors of the fifth Takkanah tried to counteract the influence of this sect? The Samaritans held the same view on this point as the author of Jubilees (see Abraham Geiger's *Nachgelassene Schriften*, III, p. 289). That explains the Mishnah Nedarim without unnecessary force and violence. It seems that the Zadokite Fragments share the view of Samaritans and Jubilees (see, however, Ginzberg, *MGWJ*, 1913, p. 401). The prohibition was later on revived by the Karaites. Anan derives it from Exodus 34. 21 (see Poznański in *Studies in Jewish Literature*, Berlin, 1913, p. 241). Other Karaites followed him faithfully (see Pinsker, *Lik. Kadm.*, pp. 22, 62, 106; Weiss, *Dor Dor*, IV, 62 and 75. On the Rabbanite opposition to this Karaite Halakah see my article in the *Festschrift* for Rector Dr. Adolph Schwartz of Vienna). There can therefore be no doubt about the origin and meaning of the fifth Takkanah.

One mistake causes another one! Dr. Zeitlin wants to explain in a new unheard-of way the Mishnah in Yadaim, which was never obscure at all. *שאתם מטהרים את הנצוק* means, as everybody is used to interpret it, *נצוק חבור*, as the commentaries put the case. The answer is: Is the stream coming from a cemetery not *נצוק חבור*, and does there exist a Sadducee in the whole world who would not use the water thereof? There is no need to mix Pilpul with history, especially when the Peshat is so near. We must avoid to construe ancient history with questions and answers, however clever and ingenious they may appear at the first sight.

A. MARMORSTEIN.

Jews' College, London.

Dr. A. Marmorstein, who agrees with me that we are not bound to accept the traditional explanation (of the Amoraim) of Mishnah and Baraita, and that we may, when critical investigation demands it, differ, does not agree with me in my interpretation of the Fifth Takkana (of the ten ascribed in the Talmud to Ezra), differing as it does from the traditional view. My proofs were based not only on Tosefta Makshirin III; that the traditional explanation is not acceptable is seen, as already cited, from Mishnah Nedarim III, 10 **אסור בישראל ואסור בכוותים**. Dr. Marmorstein holds, as did Schor (*he-Halus*), the opinion that this Takkana was directed against the Samaritans and other sects who discountenance *tashmish* on the Sabbath, and this Mishnah with regard to *shum* refers to that Takkana. The Mishnah, critically examined, does not bear out this view. For if we accept the reading as **אסור בכוותים** we are confronted by the fact that the Takkana of Ezra was directed against all those sects, including Samaritans, who, observing the old Halakah, were against *tashmish* on Sabbath. Why then **אסור בכוותים**? If we accept, as I do, the reading **מותר בכוותים**, the question arises, why does not this Mishnah specify **ליל שבת**, why does it simply say **מאובלי שום**, which would signify those who on principle eat garlic as distinguished from those who on principle do not eat it? The traditional view that the Samaritans refrained from **שום**, particularly on Friday night, but not the rest of the week, is opposed to the sense of this Mishnah. If the purpose of the author of the Takkana had been to discredit the sects (including Samaritans) who were opposed to **תשמיש** on Sabbath, it would have been the easy and natural thing for him explicitly to sanction it with the expression **מצוה**, or he would have commended it and declared Friday evening **עונה** **זמן** for everybody, laying as much stress thereon as did the Pharisees in their pronouncements against Sadducean views. Such purpose could not be effected by admonition to eat *shum* on Sabbath.

The fact that the Rabbis (in Ketubot), speaking of the varying frequency of **עונה** among differing classes, say **ת"ח מע"ש לע"ש** 'it is every Sabbath eve', has nothing to do with the old Halakah

against תשמיש on Sabbath (see Mishnah Ketubot V, 6, where no mention is made of זמן עונה ע"ש). It is certainly not directed against that Halakah, as the mention of ערב שבת is made only with regard to the ת"ה (as to this old Halakah we can find traces thereof in the Talmud).

Dr. Marmorstein is not satisfied with my explanation of the disagreement between Pharisees and Sadducees on ניצוק, differing as it does from the traditional view. He thinks that the Mishnah never presented any difficulty ; but see Geiger, *Urschrift*, p. 247 ; Derenbourg, *Essai*, p. 134.

Any Talmudic student, not holding himself bound to traditional exegesis, can see that the traditional view of this Mishnah is impossible of acceptance, as, according to that view of this Mishnah, we fail to see any analogy between question and counter-question. The Sadducees asked the Pharisees, 'Why do you declare clean ניצוק?' which tradition interprets as, 'Why do you declare clean that water which remains in the vessel after part has been poured out into an unclean vessel?' The retort is: 'Why do you pronounce clean the stream that issues from a cemetery?' The Sadducees ask one thing and the Pharisees answer with a question about what no one disputes, since in the Torah it is clearly stated מעין ובור מקוה מים יהיה טהור. It requires severe פלפול on the part of the traditionalists to find analogy in this Mishnah. By my theory, however, all difficulties vanish. As I have already stated in another place, 'equivocal expressions are frequently misleading even to students, and one of these equivocal expressions is ניצוק, which in places has really the connotation of pouring from one vessel to another.'

SOLOMON ZEITLIN.